IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 253 of 2006

SOHAN LAL & ORS.
V/S
LRS.OF FIDA HUSSAIN

Mr. MAHENDRA TRIVEDI, for the appellant / petitioner

Date of Order : 25.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the impugned judgments.

The learned lower Appellate Court after appreciating the evidence of the parties has positively found that the suit premises are not being used at all for the period of two years since before filing of the suit. For arrival of this finding, the learned lower Appellate Court has interalia also considered the fact that this part of the testimony of the plaintiff P.W.1, so also P.W.2 and P.W.3 has not been been assailed in cross-examination at all. Learned counsel for the appellant was pointedly asked as to whether this observation of the learned lower Appellate Court about non cross-examination is correct, or not, and he was requested to read the statement whereupon learned counsel submitted that the observation is correct.

In my view, that being the position, the finding of fact recorded by the learned lower Appellate Court does not require any interference under second appellate jurisdiction.

The appeal thus does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

At the request of the learned counsel for the appellants, the appellants are given six months' time to vacate the suit premises on the condition that the defendants give an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, they will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, they will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellants in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellants fail to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Sushil/